No. 108, Original

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

STATE OF NEBRASKA,

Plaintiff

v.

STATE OF WYOMING,

Defendant

BASIN ELECTRIC'S MOTION FOR LEAVE TO FILE A RESPONSE IN OPPOSITION TO NEBRASKA'S MOTION TO AMEND PETITION AND RESPONSE IN OPPOSITION

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February 16, 1988

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

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Basin Electric Power Cooperative (Basin Electric), whose motion to intervene as a party defendant in this action is pending before the Special Master, moves for leave to file the accompanying Response in Opposition to Nebraska's Motion to Amend Petition (hereinafter "Nebraska's motion to amend"). In support of this motion Basin Electric states:

1. On January 25, 1988, the Court entered an order inviting "Defendants" to respond within 21 days to Nebraska's motion to amend. As set out in the accompanying response in opposition, Nebraska's motion to amend raises substantial issues not presented by its original petition. By its original petition Nebraska sought only to protect what it perceived to be its rights to North Platte River system water for irrigation purposes as apportioned to it by the decree

in *Nebraska v. Wyoming*, 325 U.S. 665 (1945), *modified*, 345 U.S. 981 (1953). By its amended petition, Nebraska seeks apportionment of waters not subject to the decree, those of the eastern end of the North Platte River and of the Platte River itself, for the purpose not of making water available for irrigation but for the purpose of maintaining instream flows for the benefit of an area of federally designated critical wildlife habitat on the Platte River.

2. Nebraska's motion to amend is dated January 12, 1988 and was originally filed with the Honorable Owen Olpin, Special Master, to whom, by its order of June 22, 1987, 55 LW 3852, this Court referred Nebraska's original petition as well as a number of motions for leave to intervene, including that of Basin Electric, which had been filed following the Court's order of October 20, 1986, 55 LW 3493, granting Nebraska leave to file its original petition.

3. On January 15, 1988, the Special Master ordered Nebraska promptly to file its motion to amend with this Court. The Special Master's order stated that it was being issued "in view of the jurisdictional question raised" by Nebraska's motion. He cited this Court's rule 9.3 as authority for his action.

4. While the Special Master has heard oral argument on all the pending motions for leave to intervene, including Basin Electric's, those motions remain under advisement.

5. Basin Electric's motion for leave to intervene and accompanying papers, including Basin Electric's proposed answer, establish that, if granted leave to intervene, Basin Electric's status will be that of an intervenor-defendant.

6. In view of the procedural situation which now prevails, in order that the Court may be fully apprised of the reach of the new issues Nebraska seeks to present, the term "defendants" as used in this Court's order of January 25 should be construed to extend to the applicants for leave to intervene as parties defendant, including Basin Electric. It is respectfully submitted that Basin Electric's motion for leave to file the accompanying response in opposition should be granted.

Respectfully submitted,

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EDITOR'S NOTE

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BASIN ELECTRIC'S RESPONSE IN OPPOSITION TO NEBRASKA'S MOTION TO AMEND PETITION

Statement

In its original petition for an order to enforce the decree in this case, which the Court granted leave to file on October 20, 1986, 55 LW 3493, Nebraska alleged that Wyoming was violating and threatening to violate the decree by:

> a. Depleting the flows of the North Platte River by the operation of Greyrocks [sic] Reservoir on the Laramie River, a tributary of the North Platte River;
>
> b. Depleting the flows of the North Platte River by the proposed construction of additional river pumping, diversion, and storage facilities at the confluence of the Laramie and the North Platte Rivers;

> c. Depleting the natural flows of the North Platte River by the proposed construction of storage capacity on tributaries entering the North Platte River between Pathfinder Reservoir and Guernsey Reservoir; and
>
> d. Actions by state officials to prevent the United States Bureau of Reclamation's continued diversion of North Platte waters in Wyoming through the Interstate canal for storage in the Inland Lakes in Nebraska for the benefit of water users in the State of Nebraska.[1]

In its reply to Wyoming's opposition to its motion for leave to file its original petition Nebraska stated:

> Each of Nebraska's allegations involves present or threatened interference with its apportionment established by the Court in this case. *Nebraska does not seek to modify the Decree in any respect, but only to enforce it pursuant to the Court's express anticipation of the need to do so. We do not propose to litigate anything new, but simply to protect what the Court has already decided.* In short, we are asking the Court to protect the integrity of its Decree pursuant to its express and specific retention of jurisdiction.[2]

The decree in this case entered in 1945, 325 U.S. 664, as modified and supplemented in 1953, 345 U.S. 981, apportions for irrigation purposes the water of

[1] Neb. Pet. for Order Enforcing Decree 2 (Oct. 6, 1986).

[2] Neb. Reply to Wyo. Br. in Opp. 2 (Jan. 14, 1987) (emphasis supplied).

that portion of the North Platte River from its source in Colorado to Tri-State Dam, immediately east of the western boundary of Nebraska.[3] The Court characterized the controversy as pertaining "to the use for irrigation purposes of the water of the North Platte River, a non-navigable stream." 325 U.S. at 591. Nebraska initially contended that the apportionment to be made should take account of all irrigated lands in Nebraska from Tri-State Dam to Grand Island.[4] *Id.* at 607. Subsequently, Nebraska conceded that lands between Bridgeport and Grand Island could be served from local supplies. *Id.* It continued to assert, however, that the apportionment should take account of diversions between the state line (or Tri-State Dam) and Bridgeport, about 60 miles downstream from the state line. *Id.*

The master found that lands served by diversions below Tri-State could be adequately served by local supplies, even during periods of drought, without calling on up-river water, *id.*, and the Court held that an equitable apportionment would not permit Nebraska to demand water from above Whalen for use below Tri-State. *Id.* at 628, 654-55.

Thus, this case, for the purpose of irrigation, apportioned the water of the North Platte from its source in Colorado to Tri-State Dam, located about

[3] The lowest diversions of the water apportioned by the decree are made from Tri-State Dam located about a mile east of the Wyoming-Nebraska line. 325 U.S. at 595.

[4] The North Platte is joined by the South Platte at the City of North Platte to become the Platte. The City of North Platte is approximately 200 river miles east of the state line. Grand Island is on the Platte about 350 river miles east of the state line.

a mile east of the Wyoming-Nebraska border. The decree does not apportion water from the North Platte to Nebraska for diversion below Tri-State. It does not apportion any water from the North Platte to be diverted in the reach of the river from Tri-State to the North Platte's confluence with the South Platte at the City of North Platte, where the two form the Platte River. And, of course, it does not apportion any water either for diversion from the Platte River or for the maintenance of instream flows.

Reasons Nebraska's Motion Should Be Denied

Nebraska Seeks To Inject Issues Beyond the Scope of the Case

Nebraska now seeks leave of the Court to amend its petition to assert claims that are clearly without the ambit of the case previously presented to and decided by the Court and the existing decree.[5] Nebraska does not seriously contend to the contrary.[6]

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[5] Although Nebraska styled its motion as a motion to amend its petition, the Special Master, in requiring that it be filed with the Court under Rule 9.3, treated it as a motion for leave to file a new original action. In that Nebraska now seeks an apportionment for the purpose of providing instream flows in the Platte River for the benefit of a federally designated area of critical wildlife habitat thereon, the Special Master's view of Nebraska's motion is clearly correct.

[6] *See* Neb. Br. in Supp. of Mot. to Amend Pet. 2-3 (Jan. 11, 1988); Neb. Amended Pet. 4-5 (¶¶ 7, 8), 6 (clauses 3, 4 of prayer) (Jan. 11, 1988); letter of Jan. 8, 1988, from Counsel for Nebraska to Special Master (Appendix hereto). The suggestion in ¶ 7 of Nebraska's proposed amended petition that the Court might "construe" the existing decree as apportioning water to maintain instream flows for the area of critical habitat on the Platte River is frivolous. In plain terms, the decree apportions only water of the North Platte above Tri-State for irrigation. It apportions no water for the maintenance of insteam flows for any purpose and does not come within 200 miles of the Platte River or within 250 miles of the area of critical habitat thereon. *See supra* 1-4.

In attempting to justify its new claim that the decree should be modified to secure instream flows in the North Platte and Platte Rivers for the benefit of federally designated critical wildlife habitat, Nebraska cites several federal laws enacted since this case was decided for the protection of the environment and fish and wildlife.[7]

No area of the North Platte in Nebraska has been designated as critical habitat under the Endangered Species Act, as amended, 16 U.S.C. §§ 1531-1543. The Secretary of the Interior has determined, pursuant to 16 U.S.C. §§ 1533, 1536, that a 53-mile-long stretch of the Big Bend portion of the Platte River contains habitat that is critical to the endangered whooping crane. 40 Fed. Reg. 58308 (Dec. 16, 1975) (proposed determination); 43 Fed. Reg. 20938 (May 15, 1978) (final determination); 50 C.F.R. § 17.95 (1986). This stretch of the river extends from Lexington, Nebraska to Shelton, Nebraska and commences about 250 miles down stream from the Tri-State Dam.

It is clear, therefore, that Nebraska's amendment would expand the purpose of the case from apportioning for irrigation the water of that portion of the North Platte from its headwaters to about the Wyoming-Nebraska border to apportioning for wildlife habitat the water of the entire North Platte and a substantial segment of the Platte.

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[7] Neb. Br. in Supp. of Mot. to Amend Pet. 2-3 (Jan. 11, 1988).

Basin Electric submits that Nebraska cannot be permitted to so transmogrify this case without making such a showing of interest and injury as would move the Court to grant leave to file a discrete original action.[8]

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[8] In ¶ 3 of its original petition Nebraska alleges that Wyoming is violating and threatening to violate the apportionment established by the decree by:

> a. Depleting the flows of the North Platte River by the operation of Greyrock's [sic] Reservoir on the Laramie River, a tributary of the North Platte River.

In ¶ 5 of its proposed amended petition, in lieu of the above allegation, Nebraska avers that Wyoming is violating and threatening to violate the equitable apportionment established by the decree by:

> A. Allowing depletion of flows of the North Platte River through current and proposed state administration of water rights on the Laramie River, a tributary of the North Platte River, in a manner inconsistent with the apportionment in the Decree *and the provisions of the Endangered Species Act*. . . . (Emphasis supplied.)

(Subparagraphs B, C and D of ¶ 5 of Nebraska's proposed amended petition appear substantively the same as subparagraphs b, c and d of ¶ 3 of its original petition.)

As explicated in its memorandum in support of its pending motion for leave to intervene, Basin Electric is a principal owner and the manager and operator of the Missouri Basin Power Project, principal features of which are the Grayrocks Dam and Reservoir. Although Nebraska is a party to the agreement in accordance with which the project is operated, *see* Wyo. Br. in Opp. to Mot. for Lv. to File Pet. A-20 through A-36 (Dec. 17, 1986), both Nebraska and Wyoming have taken positions antithetical to the interests of the project and no other party can appropriately represent such interests. *See* Basin's Memo in Supp.

There Have Been No Material Changes in Conditions

Except for observing that, since the decree was entered in this case, Congress has passed several acts designed to protect the environment and fish and wildlife, Nebraska has not alleged that there have been any significant changes in conditions.[9] Within the principle that decrees may be modified to accommodate "changed conditions," the term refers to changed physical conditions, not to changed attitudes about the relative values of goods or resources. *Cf.* 325 U.S. at 622-23. The mere fact that, in recent years, Congress has evinced increasing concern about conserving the environment and fish and wildlife does not constitute such changed conditions as would warrant amendment of the decree.

All of the laws referred to by Nebraska are federal laws that assign responsibilities to federal officers in the discharge of their functions to protect the envi-

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of Mot. for Lv. to Intervene 8-11 (April 13, 1987).

The allegations of proposed ¶ 5.A are as hostile to Basin Electric's interests as are those of original ¶ 3.a. The depletions of the Laramie currently allowed by Wyoming include, of course, those resulting from the operation of Grayrocks. In proposed ¶ 5.A, Nebraska not only continues to allege that the depletions of the Laramie are inconsistent with the decree but newly alleges that they are inconsistent with the provisions of the Endangered Species Act.

[9] If proved, Nebraska's charges, that Wyoming is doing or threatening things that will result in Nebraska getting less water than it is entitled to, would not constitute changed conditions warranting any modification of the provisions of the decree. If made out, such charges would simply constitute grounds for taking steps to enforce the decree, not change it.

ronment and fish and wildlife. The area along the Platte River that is designated as critical habitat for the whooping crane was so designated by the Secretary of the Interior pursuant to § 4(a)(3) of the Endangered Species Act, as amended, 16 U.S.C. § 1533(a)(3),[10] and the Secretaries of Interior, Treasury and Commerce (or Defense) are charged by § 11(e)(1), as amended, 16 U.S.C. § 1540(e)(1), to enforce the Act.

The Platte River Critical Habitat Is Well Protected Under the Endangered Species Act and Other Federal Acts

The Endangered Species Act provides that no federal action and no action by any other entity or person, public or private, receiving federal assistance or requiring federal permission shall be taken without consideration of its impact on endangered species and their habitat. 16 U.S.C. § 1536(a).

Basin Electric's Grayrocks Dam and Reservoir were reviewed for compliance with the Endangered Species Act specifically in relation to the Platte River critical habitat and are operated both under an agreement containing provisions to make water available for the benefit of the habitat[11] and under identical requirements imposed by the Endangered Species Committee for the benefit of the habitat. *See* Wyo. Mot. for Summ. Judg. A-20 through A-36 (Sept. 11, 1987); Basin's Memo in Supp. of Mot. for Lv. to Intervene 3-7, A-2 through A-7 (April 13, 1987).

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[10] *See also* 50 C.F.R. § 17.95 (1986 pp. 157-58).

[11] The State of Nebraska, the United States Department of Justice, the Rural Electrification Administration, and the Corps of Engineers, among others, are parties to this agreement.

Ancillary to proceedings before the Federal Energy Regulatory Commission (FERC) to relicense under part I of the Federal Power Act, 16 U.S.C. §§ 791a-823a, the Keystone Diversion Dam and the Kingsley Dam projects, located on the North Platte River between Bridgeport and North Platte, and owned, respectively, by the Nebraska Public Power District and the Central Nebraska Public Power and Irrigation District, the Commission recently stated "the effects of the projects on these resources [the whooping crane and other endangered species and the Platte River critical habitat area] will be fully explored and considered as required by law prior to Commission action on the applications for new license." *Central Nebraska Public Power and Irrigation District, Project No. 1417-000, et al.*, 39 FERC ¶ 61,378 at p. 62,223 (June 30, 1987) (order denying petition to amend annual licenses). The Commission concluded: "Finally, given the importance of the whooping crane, we will act as expeditiously as possible on the licensees' applications for new license." *Id.*

Nebraska's original petition presents the issue of whether the prospective Corn Creek project, near the confluence of the Laramie and North Platte Rivers, and the Deer Creek project, on a tributary of the North Platte between Pathfinder and Guernsey reservoirs, may invade its apportionment for irrigation under the existing decree. Insofar as Nebraska would now allege that these projects might adversely affect the area of critical habitat on the Platte, it is clear that there are means at hand much better adapted to prevent this than interstate water litigation by original action.

At the very least, the Federal Government will be involved in both of these projects to determine whether and under what conditions they should be granted permits under § 404 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1344.[12] In determining whether to grant a permit the Corps of Engineers will be required to comply with the Endangered Species Act and other acts for the protection of the environment and fish and wildlife and, among other things, to confer with the Secretary of the Interior (Fish and Wildlife Service) and to deal with the impact, if any, of the projects on the Platte River critical habitat. 16 U.S.C. § 1536.

Given that the Endangered Species Act and the other federal acts for the protection of the environment and fish and wildlife cited by Nebraska include comprehensive provisions for notice, consultation, participation, and review to accomplish their ends, there is no need to undertake to serve these ends by original water apportionment actions in this Court. Compared with the precision of the processes prescribed by these statutes, which entail the assembly and analysis of extensive data and the conduct of specific studies, original actions are blunt instruments.[13] It is

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[12] Wyoming represents, relative to the Deer Creek project, that an application for a § 404 permit has been filed and is being processed by the Corps of Engineers. *See* Wyo. Mot. for Summ. Judg. 26, 28-29 (Sept. 11, 1987) (affidavit of Michael K. Purcell).

[13] As noted by FERC in *Central Nebraska Public Power*, 39 FERC at p. 61,378, the Fish and Wildlife Service and the Bureau of Reclamation are engaged in a comprehensive study of the Platte River. This study, entitled "Platte River Management Joint Study," as revised March 12, 1985, contains the following statement of purpose:

> The purpose of the parties involved in Phase I of the Platte River Management Joint Study is to cooperate in discussions seeking ways to develop and implement recovery plans and programs which will enable Federal agency actions associated with water project development and depletions in the Platte River Basin to proceed in compliance with the Endangered Species Act while avoiding conflicts between the Endangered Species Act and state water rights systems and the use of water apportioned to a state pursuant to the compact and decrees concerning the waters of the Platte River and its tributaries.

settled that the Court will not exercise its original jurisdiction without a showing of absolute necessity, *Alabama v. Arizona*, 291 U.S. 286, 291 (1934); *Louisiana v. Texas*, 176 U.S. 1, 15 (1900), and that no such necessity exists where the matter can be dealt with elsewhere. *Arizona v. New Mexico*, 425 U.S. 794, 796-97 (1976); *Illinois v. City of Milwaukee*, 406 U.S. 91, 93-94 (1972); *Massachusetts v. Missouri*, 308 U.S. 1, 18-19 (1939). Clearly, the interests of the Platte River critical habitat are being adequately looked after incident to the administration of the Endangered Species Act, the Federal Power Act, the Federal Water Pollution Control Act, and other federal laws and do not require the intervention of the Court by way of an original action.

Nebraska Has No Peculiar Interest In and Can Suffer No Peculiar Injury From the Maintenance of the Platte River Critical Habitat

The Court has repeatedly held that a state that would invoke its original jurisdictions must show particularized interest and injury.

In *Colorado v. Kansas*, 320 U.S. 383 (1943), after stating that the vital question was "whether Kansas has made good her claim to relief founded on the charge that Colorado has, since our prior decision, increased depletion of the water supply to the material damage of Kansas' substantial interests," *id.* at 393, the Court said:

> In such disputes as this, the court is conscious of the great and serious caution with which it is necessary to approach the inquiry whether a case is proved. Not every matter which would warrant resort to equity by one citizen against another would justify our interference with the action of a state, for the burden on the complaining state is much greater than that generally required to be borne by private parties. Before the court will intervene the case must be of serious magnitude and fully and clearly proved. And in determining whether one state is using, or threatening to use, more than its equitable share of the benefits of a stream, all the factors which create equities in favor of one state or the other must be weighed as of the date when the controversy is mooted.

Id. at 393-94. *Accord Washington v. Oregon*, 297 U.S. 517, 522 (1936); *Alabama v. Arizona*, 291 U.S. at 292; *Connecticut v. Massachusetts*, 282 U.S. 660, 669 (1931); *North Dakota v. Minnesota*, 263 U.S. 365, 374 (1923); *New York v. New Jersey*, 256 U.S. 296, 309 (1921); *Missouri v. Illinois*, 200 U.S. 496, 520 (1906).

Nebraska has alleged neither particularized interest nor injury in support of its undertaking to secure a

modification of the decree to apportion water for the Platte River critical habitat area. It does not allege that the area has been shorted of water by reason of anything done in Wyoming, Colorado or elsewhere.[14] Grayrocks Dam and Reservoir are being operated by Basin Electric in accordance with the agreement to which Nebraska and the U.S. Department of Justice, among others, are parties and the order of the Endangered Species Committee. The Corn Creek project is not yet scheduled for construction and may never be built. If it is, it will have to meet the requirements of the Endangered Species Act to receive a permit under § 404 of the Federal Water Pollution Control Act. The Fish and Wildlife Service has determined that the Deer Creek project will not adversely affect the Platte River critical habitat area, provided Wyoming does certain things it has agreed with the Fish and Wildlife Service to do.[15]

Such amorphous allegations as are contained in ¶ 8 of Nebraska's proposed amended petition simply do not meet the requirement that a state that would invoke the Court's original jurisdiction "must allege, in the complaint offered for filing, facts that are clearly sufficient to call for a decree in its favor." *Alabama v. Arizona*, 291 U.S. at 290-91. The threatened injury, if any, is not "clearly shown to be of serious magnitude and imminent." *Id.* at 292.

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[14] Indeed, it does not allege that Nebraska has been shorted of water for irrigation by anything yet done in Wyoming or Colorado. It pleads only that it fears that certain things proposed to be done in Wyoming might have such effect.

[15] Wyo. Mot. for Summ. Judg. 29 (Sept. 11, 1987) (affidavit of Michael K. Purcell).

More fundamentally, the interest of Nebraska and its citizens in the preservation of the whooping crane and the other species that use the federally designated area of critical habitat along the Platte River is legally no different from that of any other state and its citizens. The whooping crane for whose particular benefit the Platte River habitat is designated is migratory. Any individual crane that may, at one time, be on the Platte River may, at another, be in northern Canada or southern Texas, or anywhere in between. On the central flyway, areas of critical habitat have been designated for the whooping crane in the Northwest Territory, Alberta, Kansas, Oklahoma and Texas, as well as in Nebraska. 50 C.F.R. § 17.95 (1986 at p. 157). Such areas have also been designated in Idaho, Colorado, and New Mexico. *Id.* Congress declares in the Endangered Species Act that "these species . . . are of esthetic, ecological, educational, historical, recreational, and scientific value *to the Nation and its people*," and that "*the United States has pledged itself as a sovereign state* in the international community to conserve to the extent practicable the various species of fish or wildlife and plants facing extinction, pursuant to [several listed treaties and conventions] and other international agreements." 16 U.S.C. § 1531(a)(3), (4) (emphasis supplied).

The interest of Nebraska and its citizens in preserving the whooping crane and other endangered species that visit the Platte River habitat[16] is no

[16] Nebraska says in its brief in support of its motion to amend that: "In the North Platte and Platte River valleys, this legislation [the Endangered Species Act and other acts of Congress for the protection of the environment and wildlife] has been directed, in part, to some 230 species of migratory birds which

greater or more particularized than the interest of the Nation and all its citizens. Nebraska is not *parens patriae* to all of the people of the Nation and cannot stand in judgment for them.

As stated above, Nebraska has not specifically alleged that anything that has been done or is proposed to be done has or will in fact cause injury to the Platte River habitat area. All developments in Wyoming and Colorado must comply with the requirements of the Endangered Species Act, including that they not "result in the destruction or adverse modification of habitat of such species." 16 U.S.C. § 1536(a)(2). Just as Nebraska and its citizens have no peculiar interest in the preservation of the whooping crane or any of the other endangered species that use the federally designated Platte River critical habitat, they would suffer no peculiar injury if the welfare of such species were threatened by the degradation of the habitat. Actions that would put the survival of any of these species at risk, regardless of where taken, would injure the Nation and all its citizens equally. Nebraska and its citizens would be injured no more and no differently by the extinction of the whooping crane than, for example, would be

inhabit the area, six of which are endangered or threatened." Neb. Br. in Supp. of Mot. to Amend Pet. 2 (Jan. 11, 1988). The other threatened or endangered species referred to are the Eskimo Curlew, the Bald Eagle, the Peregrin Falcon, the Piping Plover, and the Least Tern. *See* 50 C.F.R. § 17.11 (1986 at pp. 83, 84, 87, 88). All of these species are widely dispersed and no critical habitat has been designated for any of them. *Id.* The Platte River critical habitat, while it may be visited by the other species referred to, is designated exclusively for the whooping crane. 50 C.F.R. § 17.95 (1986 pp. 157-58).

North Dakota, South Dakota, Kansas, Oklahoma and Texas and their citizens.

Unlike areas designated as parks, wild and scenic rivers, and wilderness, critical habitat is not designated for the sake of preserving the lands and waters of the areas, as such, in their natural state, but for the sake of protecting the endangered species that visit the areas. Apart from the endangered species that inhabit them, areas of critical habitat have no function, and Nebraska and its citizens have no more interest in or responsibility for the endangered species that inhabit the federally designated area of critical habitat on the Platte River than any other state or its citizens.

Conclusion

For the foregoing reasons, Basin Electric respectfully submits that Nebraska's motion to amend its petition should be denied.

Respectfully submitted

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APPENDIX

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January 8, 1988

FEDERAL EXPRESS

OWEN L. OLPIN, Esquire
O'MELVENY & MYERS
400 South Hope Street
Los Angeles, California 90071-2899

Re: *Nebraska v. Wyoming*, Original No. 108

Dear Mr. Olpin:

As I explained over the telephone on Tuesday, the State of Nebraska has decided to seek leave to file an amended petition. Predicated on the belief that the protection of stream flows for the maintenance of critical wildlife habitat is a burden that must be borne by each of the basin states, we are seeking to modify the 1945 Decree to the extent necessary to complete the equitable apportionment of the waters of the North Platte River.

The pleadings went to our printer last night. They will be completed and signed on Sunday and forwarded by Federal Express on Monday.

Sincerely,

/s/ RICHARD A. SIMMS
RICHARD A. SIMMS

RAS:rlr
cc: Michael Jess
The Honorable Charles Fried
Andrew F. Walch
The Honorable Joseph B. Myer
Dennis Cook
Duane Woodard
Wendy C. Weiss
Charles N. Woodruff
Able David Lowell
Peter J. Kirsch
Joseph N. Onek
Tom Watson
Edward Weinberg